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ABSTRACT

This article defines psychological abuse of students in school settings and describes legal aspects of the problem, particularly with respect to possible action in negligence. The following four categories of psychological abuse are examined: verbal abuse, refusal to communicate, physical acts (and sexual abuse) that cause psychological damage, and combinations of verbal and physical acts that cause psychological harm. The professional knowledge base of teacher verbal behavior is discussed as a condition for possible tort action or dismissal of teachers who intentionally or negligently abuse students psychologically. Finally, a cultural-professional-legal rationale for child abuse is discussed. (Author/DCS)

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Psychological Abuse of Children: Implications for Malpractice and Dismissals of Teachers

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Abstract

The article defines psychological abuse in school settings, describes legal aspects of the problem, particularly with respect to possible action in negligence. The professional knowledge base of teacher verbal behavior is discussed as a condition for possible tort action or dismissal of teachers who intentionally or negligently abuse students psychologically. Finally, a cultural-professional-legal rationale for child abuse is discussed.

Psychological Abuse of Children: Implications for Malpractice and Dismissals of Teachers

Psychological abuse of students in elementary and secondary schools by teachers is a problem which courts have recognized occasionally as a basis for dismissal of the teachers, but not as grounds for negligence in tort actions. The history of tort actions using the professional negligence paradigm in education is recent and so far unsuccessful, beginning with the Peter W. case in 1976 but teachers have been dismissed for what can be termed psychological abuse.

I would offer the following definition of the term, "psychological abuse in the classroom": deliberate verbal or physical acts or refusal of a duty to communicate on the part of a teacher which cause such extreme discomfort or negative feelings in a student as to interfere with that person's right to learn or the right to freedom from harm to one's personality. The definition is directed toward that psychological abuse done by teachers to students, and does not include acts by students, unless they are encouraged or directed by teachers.

Schools have an elaborate pecking order based on physical strength and appearance, wealth and its visible concomitants, ethnic and religious affiliation, residential location, and verbal ability, to mention a few factors. This pecking order is usually considered to be independent of teacher intervention. To the degree that it is independent, teachers are not liable for its effects on students. But it may be influenced by and supported by teacher behavior, conscious or unconscious. Students in urban schools have been victims of other students who have extorted money from them, have assaulted them, and who have intimidated them. To the degree that children suffer from the harmful consequences of conscious teacher efforts to direct or encourage psychological or physical assaults by other children, such teachers are responsible for those effects. Teachers have been liable for physical assaults of

children on each other only when those teachers have been negligent in their duty of care to supervise children and to warn them of danger.

The urban school is structured socially in ways which makes children vulnerable. That is the impersonality of the school, the social distance between teacher and student, and the culture gap between student and teacher. The urban public school is impersonal because it is large. The teachers and administrators seldom live in the school neighborhood, especially if it is in the ghetto. The culture of the child and the culture of the teacher, even though they are of the same race, are far apart. The teachers don't know the extent of the threats and punishment which children in their classes undergo. The very impersonality and social distance between teacher or administrator and pupil in a large ghetto school make it more unlikely that the school can protect the child. Children who are threatened most by dangers in their neighborhood or school may be the least apt to be protected. There are indications that urban schools are less dominated by gangs and by unruly students than a decade ago. But it is important that schools be free from the harm done by eachers attendant upon psychological abuse. Teachers are not entirely conscious of the dimensions of psychological abuse which I will identify in this presentation.

Psychological abuse can result from consciously committed acts of teachers which are:

1. verbal behaviors which demean the student, directly or indirectly,
2. refusal to communicate with certain students which may result in damage to those students' learning opportunities or which may demean the student,
3. physical acts which cause psychological damage to students, and
4. combinations of verbal and physical acts which cause psychological harm to students.

Psychological abuse is damaging to students because of the following effects which may be long lasting:

1. extreme mental or physical discomfort which may be associated with situations or people such as those from whom the student has suffered abuse,
2. extremely negative feelings about the student's self, including the ability to learn or to perform as expected in order to learn,
3. negative feelings which may be associated with schools, classrooms, teachers, and learning situations in general, and
4. negative feelings about the student's self which may lead to destructive behavior such as alcohol and drug abuse, social or psychological withdrawal, vandalism, or abuse of others, especially students of the same or younger ages.

Psychological abuse due to verbal behavior includes such behavior as defamation. A teacher in Pennsylvania called a ninth grade female student a "dog," "slut," and a "prostitute" (Bovino v. Board of School Directors of Indiana School District, 377 A.2d 1288, 1977). One teacher called his students "dumb Niggers" (Clarke v. Board of Education of the School District of Omaha, 388 N. W. 2d 273, 1983). Others have referred to students collectively as dummies or idiots. Many physical education teachers believe it is quite all right to call overweight students to their faces as "hogs" or "sows," "fatsos," "blubber-butts," or worse. Anyone who has watched an inter-scholastic athletic event has heard coaches call players, even those in the seventh grade, some of the wildest names imaginable. In four junior varisty football games during the fall of 1983, this writer recalls only one coach, fortunately of his own school district, who could not be heard from across the field calling students foul

names. That coach's demeanor was rare. In fact, the coach led the players in a prayer after the game which the ACLU might allege to be grounds for dismissal, while it maintains silence about the coaches who cursed their students.

Teachers have been dismissed for defaming students because of their racial, ethnic, or sexual characteristics. Attempts to dismiss teachers because of their verbal harrassment of overweight students, or coaches' verbal attacks on students, are rare.

The verbal harrassment may be likened to psychological warfare against students. Its results can be long lasting and very serious. The effects may be such as to cause long-lasting emotional damage, or damage to one's self concept as a student, whether in academic work or in an activity. Some teachers have claimed that calling students names motivates them, but it would be a rare clinical psychologist who would agree that such verbal abuse has positive affects, when the research evidence is that positive verbal reinforcement rather than extreme and prolonged harrassment improves the self-concept. The more frequent and prolonged the verbal harrassment, the more serious the possible effects on a student's view of one's self as learner.

An example of much more subtle psychological abuse is found in Rist's (1970) account of a group of low status children in a ghetto school who began in kindergarten to receive the disrespect of other children, because of the caste system which was constructed by teachers. He followed the group through second grade. The seating arrangements of the low-status children put them farthest away from the teachers, even though they were most in need of help. The low status children were prevented from learning from classmates or their teachers. This is an example of reproduction theory in which the teacher's treatment of the low status children was reproduced by the higher status children in the classroom and on the playground. By the end of second grade, the self-concept as learners held by the most of the low-status children

was likely damaged beyond repair for the rest of their school career. Only an intervention by a powerful, alert, dedicated teacher of a subject in which one of these children could excel (probably a non-academic one) could rescue one of these children.

Good and Brophy in their 1973 work described the power of teachers over students by use of differential verbal stimuli to encourage, inform, and reward students. From the research of those who have studied verbal patterns of teachers and students in interaction such as Amidon and Hunter (1966), Flanders (1970), Medley (1971), and Good and Grouws (1977), it is clear that teachers have a powerful instrument for shaping pupil behavior and self-concept in the way the teachers use words, and the way they accompany those words with their construction of the ecology of the classroom - its seating arrangement, the scheduling of activities in the room, and the uses of classroom protocols for which different roles are prescribed for different kinds of students. Teacher expectations of student achievement are low for some, high for others, and teachers use different language for the students in the low and high group, according to Good and Brophy. Fine (1978) found that teachers used different language in their English classes for students who were in vocational technical programs than for those who were academic. Verbal "put downs" were common for the "vo-tekkers," but not for the academics.

It would be difficult, if not impossible, at this time, to dismiss a teacher for not being supportive enough, or for using mildly "put down" or insufficiently supportive behavior for low-status students. Before using verbal behavior as a cause of action in a tort suit, damage must be proven and it is difficult to show harm or damage as a direct result of verbal behavior.

Good and Brophy (1973) emphasize the powerful effect that teacher expectations have on their own verbal behavior toward students, and discuss the effects of that expectation - verbal pattern on students. According to them, teachers use different

verbal behavior with the learners they perceive to be slower, while they suggest that there may be a correlation between social class status and teacher expectation -verbal pattern.

Teacher verbal patterns are at once stimuli and reward for students. Good and Brophy say that teachers are partly conscious of the effects of their verbal behavior, and are only partly conscious of their own differential use of verbal cues and rewards. They suggest that becoming aware of one's own biases and verbal patterns is a necessary first step of retraining teachers in the affects of verbal behavior. The research in teacher verbal behavior has become an important portion of what we know about what goes on in classrooms. What is so important is that this research provides us with an insight into the teaching process, so far the weakest link of the input-process-output analytic chain om schooling.

The relationship of teacher-student verbal behavior to pupil achievement as measured by achievement tests is less firm than the observed relationship between classroom verbal behavior and pupil verbal recall. We are building more confidence in the teacher-pupil verbal models, however.

The verbal interactions between inner city children and teachers is a research topic which is scarcely touched. The language of inner-city children is not standard English. That of teachers in the classroom is. Many teachers understand street English of the ghetto, but the language of the clasroom is not that language, so teachers verbally reward students who have a mastery of standard English. Do they ignore or put down kids who use non-standard English? We know that in classrooms in England, kids who use working-class English feel alienated, are not rewarded, and unwittingly cooperate with the school in the scenairo which predestines them to a life in the under-class. (See Michael F. D. Young, 1971, and Basil Bernstein, 1982).

The second type of psychological abuse, by withholding communication, would, given the research we now have, be devastating to a student. A Black student complained of his wasted years in a urban British school, by observing that he was never recognized by most teachers. He remembered that he was ignored so much that he never had enough communication with a teacher even to know when he was wrong. He was treated as a non-person. He would have preferred being called names or belittled to that treatment. Good and Brophy (1973) said that teachers who call on students who they classify as poor simply don't expect answers from them. They call on the slow students, but don't wait for them to answer, and go on to a brigher student for the correct response. One such teacher, asked why she did that, replied that she didn't want to allow the slow student to be embarrassed by giving the wrong answer, and that waiting too long for a slow student to answer also embarrasses those students.

Not communicating can be devastating to students, who are deprived of the value of both negative and positive feedback. Once research determines more definitely the effects of classroom verbal communication on achievement, it is possible that this denial of teacher support could be grounds for a malpractice suit. Before that is possible, the harm to the student would have to be proven, the effects would have to be related to teacher behavior, and either negligent or willful denial of verbal communication to student would have to be established. If research does not establish the correlation between verbal behavior and achievement and other desirable outcomes, a cause of action would be extremely difficult to establish.

Establishing a cause of action in malpractice is difficult even if research has determined the possibility of cause and effect, because the cause and effect in the particular instance must be established. What is more likely to occur, once we have more definite evidence of the relationship between teacher verbal behavior and

student achievement, is that administrators will observe such patterns, and that evidence of a teacher's inability to manage classroom verbal patterns which stimulate pupil learning can be used as grounds for dismissal. Such action would require the use of protocols of classroom verbal behavior for teacher evaluation, something which several authors of the instruments have counseled against in the past.

What will determine the use of classroom verbal behavior as evaluative material for teachers is the strength of the underlying research, including sufficient reliability of findings to allow this approach to be defended in court by expert witnesses. Once the research becomes solid enough for supervisors to use in counseling teachers on their verbal methodology, using taped sequences, it would be difficult to charge that it could not be used as evaluation critera, provided that the research was used by the evaluators.

The use of research findings to support the evaluation of teachers, and providing grounds for dismissal of those whom administrators and boards judge to be incompetent in the light of such findings, will move the process away from traditional grounds, such as lack of classroom control and record keeping or violation of bureaucratic norms to grounds which are those which professions use for evaluation of their member's behavior.

The third cause of psychological abuse, physical acts which cause psychological damage, include assault and battery, sexual assaults, and offensive touching. A teacher who uses physical punishment excessively is in possible violation of criminal law as well as the civil law which requires teachers to use only that force which is necessary to maintain order in the school or to defend a student from harm or the person of the teacher. Schools which forbid corporal punishment may dismiss a teacher for striking children in violation of school district policy. School district policy is administative law, therefore a teacher breaks the law by striking a child

without the need to defend a student or herself from harm. The case of Brown v. Philadelphia School Board is an example. The teacher was dismissed for her repeated violation of the board policy which forbids teachers to use corporal punishment against children. The teacher's appeal to the Secretary of Education was dismissed, because it was in accord with the Pennsylvania statutes which allow dismissal of teachers "for persistent and wilful violation of the school laws of this Commonwealth..." (Pennsylvania School Code, 1122).

School laws prohibiting the use of corporal punishment of students are designed to prevent psychological as well as physical abuse of students. The risks attendant upon physical abuse of students are not only those pertaining to the body, but also to the student's self-esteem as a person and student, and feelings of well-being in the school.

If a child can be beaten, his self-image is one of failure which can only be corrected by assaults to his body. The child may think that teachers believe that his mind cannot be trusted to accept and use verbal communications. A student's distrust and fear of school and its authorities grows with use of corporal punishment. The cases involving corporal punishment reveal another pattern; those punished are small, of low income groups, and disproportionately belong to minority groups. The punishing school says to the child, "we can't teach you through your weak mind, but we must send a message through assaults on your body." What is the message to be communicated? ... is that obedience, compliance, and guilt are to be learned. Nothing of the mental skills measured in cognitive tests can be taught effectively or efficiently through pounding on the body. The Ingraham v. Wright case (430 U. S. 657, 1977) is an eloquent example of this. Those kids were beaten for not returning to class

quickly enough after an assembly program. The principal in the case was accustomed to roaming the halls with a paddle, looking for pupils whom he could punish. Dickens wrote about him.

Sexual abuse is another example of physical abuse. The common law has long abhored sexual contacts between teachers and pupils, because pupils are such easily available sexual objects. Further, the disturbances to school purposes and order resulting from sexual use of students would corrode all teacher - pupil relationships. Given the doctrine of in loco parentis, the common law views the sexual contacts between teacher and pupil almost as a form of incest.

The recent revelations in California of the widespread sexual abuses in nursery schools (Ed. Week, April 11, 1984) warn us that abuse of children can occur at any age, and in spite of apparently careful and extensive state inspection. The younger the child, the more vulnerable they are to the psychological effects of abuse.

An interesting aspect of the California episode and many other cases is that students or parents rarely bring charges against the teacher or school. Charges are more often brought by the school authorities. A teacher who was dismissed from a Pennsylvania district (Dunkle v. Wilson School Board) had been charged with requiring two female students to submit to his inserting a rectal thermometer into them after school hours, which according to him was necessary for completing their laboratory experiences in science. The 14-year-old students may have known that his actions were improper and far beyond the bounds of his teaching responsibility, but neither girl filed charges. Only after consulting with the girls and parents did the district file charges. The point is that no matter how egregious the teacher's behavior, the parent of the student and the student usually give the benefit of the doubt about sincere professionalism to the teacher. Parents and students are probably hesitant to expose

themselves to the publicity and legal abuse which attends any kind of hearing, given the elaborate protection of due process which our legal system grants to the accused. Those alleging abuses must have a very powerful case and must be willing to be exposed to public cross-examinations in which any questions to the accuser about one's own past acts or motives are the rule. The accuser is on trial as much as the defendant.

A fourth cause of psychologial abuse is a combination of verbal and physical actions which cause harm to a student. An example is a seventh grade teacher who singled out a 12-year-old female student for verbal attention after class and in the hallways (Bendl v. Greater Latrobe School Board). He told her how sexy she was and that he loved her, and did not know what to do about it. He asked her to call him and drove by her house repeatedly for no professional reason.

In the district's dismissal hearing the child stated that she felt confused and upset by what she perceived to be strange behavior for a teacher. The student had a dream in which she was chased by the teacher. She was afraid to go to school because she did not know what the appellant was going to do.

The child described the effects of psychological abuse more clearly than any clinician could possibly do. Her entire description may be typical of the results of child abuse. What the girl could not tell us at that time is how long-lasting these effects might be.

The statutes in certain states expressly mention immorality as a cause for dismissal of teachers. It is often accompanied by a charge of incompetency, which in the judgement of the courts is allowable because teacher immorality afffects one's competence. The nexus between alleged immorality with students and competency is established once immorality is proven. Quite simply one in loco parentis cannot have

sexual relationships with those for whom one is responsible. Adults are prohibited by law from sexual contacts with minors, even if the minors allegedly consent. The statutory provisions for dismissal of teachers based upon immorality exist because of the presumption that sexual contacts between teachers and pupils destroy a teacher's effectiveness.

The relationship between pupil and teacher is recognized by law to be a very special one. No other relationship between minors and adults outside the family is clothed with so many mutual obligations in common law, including the in loco parentis paradigm. Teaching historically is accorded special status, socially as well as legally, because of the recognition that an adult has something special and important to give to a student, which requires an extensive relationship of dependence of the student upon the adult. The adult's behavior is circumscribed by custom and law in order to protect both student and adult from unwarranted expectations on the part of the other. Teachers' obligations are extensive, but are limited by contract and by common law.

The historical limitation in America upon the sexual contact between teacher and student exists for several reasons which might be called cultural, and others which might be called professional. Both sets interact to reinforce the society's prohibition of privileged adults trespassing into the territory of sexual contact. The reasons include, but are not limited to the following:

1. Students are very impressionable because of their immaturity and experience, and are therefore easily victimized by adults seeking sexual contacts.
2. Students are vulnerable because they are students, under the protection of those in loco parentis. Even without the in loco parentis doctrine, students

are more recipients than active in the learning process. The nature of the relationship of teacher-learner is mostly defined by the adult teacher who knows what must happen, and must take the active role in the learning relationship. The student as learner has fewer rights and responsibilities to define the mutual role, and is therefore relatively powerless and vulnerable.

3. Students consciously or unconsciously seek a certain amount of role modeling in the teacher who is probably the most significant adult to the student outside the home. This is another source of student vulnerability.

4. Sexual teaching imparted by the school must be done according to law. This means that such teaching must be formally approved by state or local authorities. This is an area of contention and is heavily value-laden because of the norms which are carried in the various cultures of the society. The cultures of a society often clash concerning how much of this kind of teaching the school is allowed to provide. Teachers who present sexual knowledge, because of the heavy value loading in this matter, are expected to follow policies laid down concerning this curriculum. In spite of these cautions, parents have the common law right, and in some states a statutory right, to exempt their children from such instruction. Informal teaching of students, especially on a one-to-one basis is particularly delicate to both because of the dangers of transgressing the bounds of the officially sanctioned sex curriculum. A counselor or school nurse are allowed more judgement than teachers in talking with certain students about sex because of their special roles.

5. Students who have had sexual contacts with teachers may view themselves as having more bodily attraction than mental value to adults. The risk to

students in damaging their self-concept as persons possessing a valuable mind is great. The psychological damage to a student who has been sexually involved with a teacher is similar to the damage to a student who has been punished bodily. The impression which may be created is that adults place much more importance on the student's body, while dismissing or diminishing the importance of the student's mind.

6. Students do not have a choice whether to go to school. They must go to a school and literally subject themselves to adults who are unknown to their family and must be subject to these unknown adults in many ways. The parents do have a choice of the kind of school to whom they send their children, but not of the adults within that school.

Through our common law and statutes, our society forbids sexual contact between teachers and students solely because of the danger of psychological damage to the student. It is not because our society values virginity or sexual innocence so highly. It is rather that our society values education so much as to be a universal requirement, and a key to unlocking the treasures of personal development. Society does not want that process to be contaminated by violation of the incest taboo. We do not know how often the taboo is violated but violators are punished only when knowledge of the violation of the taboo becomes public.

The trends in the courts to secure more individual liberties to children, to give them the right to decide, as Justice Douglas advocated in his famous dissent to the majority opinion in Wisconsin v. Yoder (406 U. S. 241, 1972) have consequences which may not be without cost to the child. If children have a full corpus of civil rights by age five, as some ACLU attorneys advocate, they cannot by definition be subject to psychological abuse. They then are free to accept or reject offers of help or of sexual

liasons with no protection or guidance necessary from anyone including their parents. Their own judgements will be controlling. The interactions with adults qualitatively cannot be judged differently than those with other children their own ages. No one can presume to protect children from their own decisions. The teaching or training of children can be accepted or rejected by a child in favor of what looks like a more exciting offer and children themselves can be free to choose whatever goods they wish. Do we see the children of a new crusade on the dock ready to board the ships to sail away to a glorious liberation as in the Middle Ages? The innocent children were expected to carry out the liberation which the adults could not. We all know that the end of that story saw those children in slavery.